

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF THE

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COMMISSION ON CONTINUING
LEGAL EDUCATION

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2005 - 2007 REPORT

TO THE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF
IOWA:

This report of the Commission on Continuing Legal Education is submitted as required by Iowa Court Rule 41.2 for the period January 1, 2005 through December 31, 2007. The financial reports of the Commission as prepared by Brooks Lodden, P.C. covering the fiscal years ending November 30, 2005, November 30, 2006, and November 30, 2007 were or will be submitted to the Court separately. The financial reports each include a section entitled *Management Discussion & Analysis*, which was prepared by Commission staff and represents the opinions of Commission management. It is a fairly succinct statement of the major points shown by the audit, and examination of that statement is recommended in lieu of any separate analysis the Commission might otherwise provide regarding financial operations of the Commission.

THE COMMISSION

Members

Chapter 41 of the Iowa Court Rules establishes the Commission on Continuing Legal Education. Iowa Court Rule 41.2 provides for the appointment of twelve members to the Commission, two of whom are not to be lawyers.

During the period covered by this report the non-lawyer members of the Commission were Russell Glasgow of West Burlington and Dr. Lloyd A. Stjernberg of Des Moines. The lawyer members of the Commission during the period covered by this report included the following:

The Honorable David L. Christensen, Ellston
Matthew Doré, Des Moines
Barbara Maness, Davenport
Randall Armentrout, Des Moines
Sarah W. Cochran, Fairfield
Patricia Vogel, Orange City
Karla Shea, Waterloo
Gary R. Faust, Council Bluffs
William J. Miller, Des Moines
Debra L. Hulett, Des Moines
Renee V. Sneitzer, Oakdale
Sheldon F. Kurtz, Iowa City
Kristen M. Ollenburg, Mason City
Loan H. Hensley, Sioux City
Kathleen Kleiman, Cedar Rapids

Matthew Doré served as chairperson of the commission through the conclusion of his term in July of 2005. In the fall of 2005, Sarah Cochran of Fairfield was appointed to serve as chairperson. The Commission expresses a special thank you to Matthew Doré, Barbara Maness, Randall Armentrout, Patricia Vogel, and Karla J. Shea, who completed terms during the period covered by this report. Their leadership and experience contributed significantly to the efforts of the Commission.

ACCREDITATION

Policies

Although the Commission considers all applications for accreditation on

an individual basis, certain general policies regarding accreditation have been developed by the Commission. The current accreditation policies of the Commission are set out at Appendix A to this report.

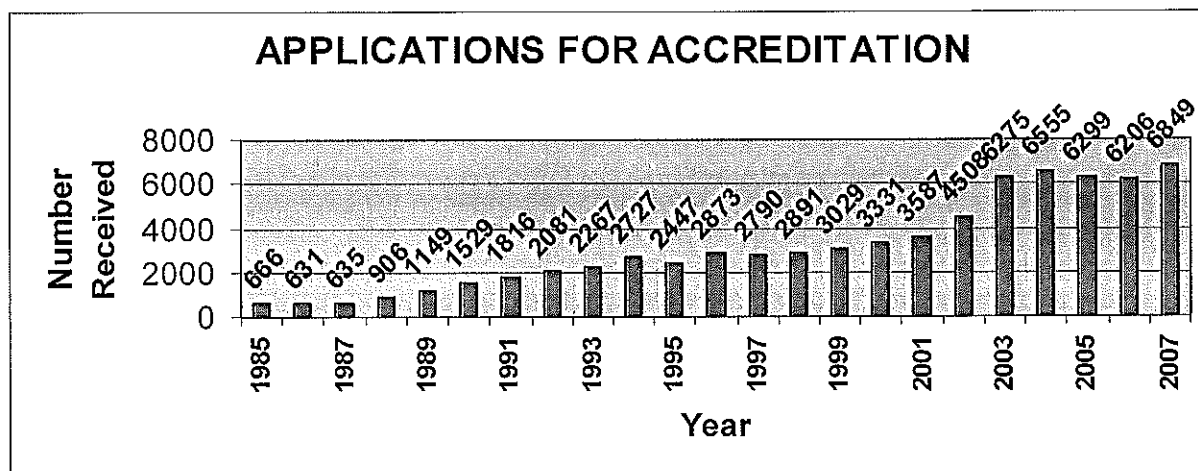
Procedure

The Commission maintains two accreditation divisions of five members each, which consider applications for accreditation of programs. In 1984, the Commission granted to the Executive Director the authority to approve individual accreditation requests that clearly would be approved under the rules and the general accreditation policies of the Commission. A list of all requests approved by the Director or by the Commission is maintained on the Commission's Internet web site¹ and is updated at least weekly. When accreditation of a particular event appears unlikely based on past Commission practices, the Director issues an informal denial of credit, explains the basis for the denial and advises the applicant of the procedure for appeal. If the applicant desires consideration by an accreditation division of the Commission, the issue of accreditation is referred to one of the two accreditation divisions for review. Accreditation matters not resolved by an accreditation division are reviewed and considered by the entire Commission at a regular commission meeting.

Based on the Commission's recommendation, the Court by rule adopted February 22, 2002 repealed that portion of the rules pertaining to accredited sponsor status. The status of accredited sponsor no longer exists in Iowa. Consolidated reporting by accredited sponsors after the end of a calendar year

¹ http://www.judicial.state.ia.us/Professional_Regulation/Attorney_RegulationCommissions/CLE/

had created difficulty for Iowa attorneys who were filing their annual continuing legal education (CLE) reports at approximately the same time. The Commission and its staff believe that accreditation on an activity-by-activity basis, before or immediately after an activity is conducted, fosters more accurate annual reporting by attorneys, and allows publication of more timely CLE accreditation information to attorneys through various means including the Internet. Based on the rule change, all CLE in Iowa now is approved on an activity-by-activity basis. Based in part on elimination of the accredited sponsor program, the number of applications for accreditation filed each year has increased. During 2007, 6849 applications for accreditation were considered. As the following table indicates, this number once again represents an increase in the number of applications as compared to prior years.



Of the 6,849 individual applications for regular or legal ethics accreditation considered in 2007, 6,680 applications were approved in whole or part. One hundred and sixty applications were resolved without credit through informal consultation with the applicants. The accreditation divisions of the

Commission considered nine applications, resulting in partial or complete approvals of two, and denial of regular credit for seven. No applicants requested formal hearings before the Commission, pursuant to Iowa Court Rule 42.10, on accreditation applications originally denied in whole or part by an accreditation division.

Computer-Based Continuing Legal Education

The Commission studied the area of technology-based education for several years. Based on its study, the Commission recommended during 2001 that Iowa attorneys be allowed to acquire up to six hours of CLE credit each calendar year from computer-based activities, so long as the activities are interactive. The Court approved the change, to be effective July 1, 2002 for computer-based CLE activities performed after that date.

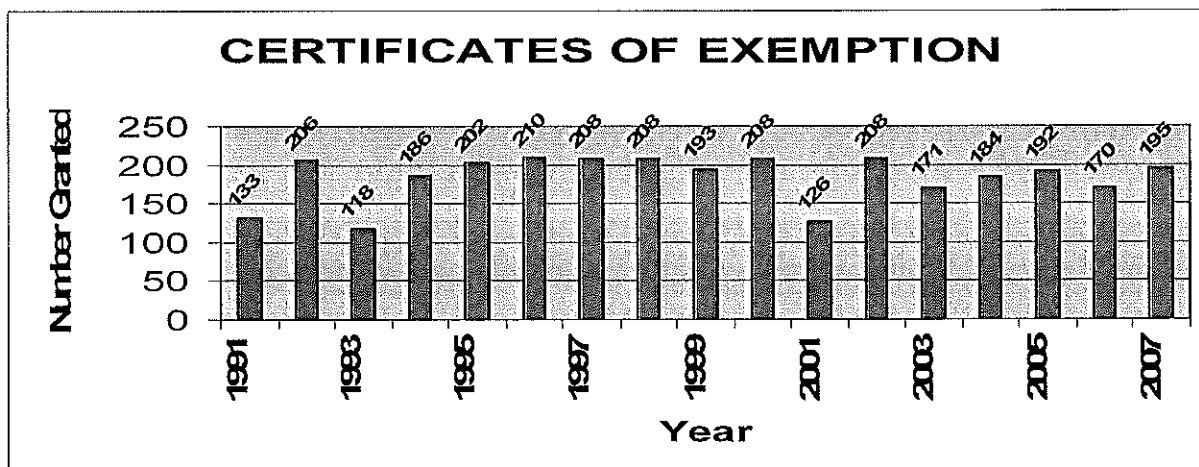
During 2007, 165 computer-based CLE events, approximately 2.47 percent of the total accreditation approvals, were approved for Iowa CLE credit. Of these 165 approvals, twenty-two were issued for events submitted by Iowa sponsors, and the remainder were issued for events submitted by national CLE providers.

Some providers of computer-based CLE have encountered difficulty meeting the requirement that the actual program instructors provide answers to the attorneys who view these programs on a demand-basis over the Internet. After consideration, the Commission determined that an exception to this requirement will be considered on a provider by provider basis, so long as the

provider is willing to make qualified subject matter experts from its own staff available to answer the questions.

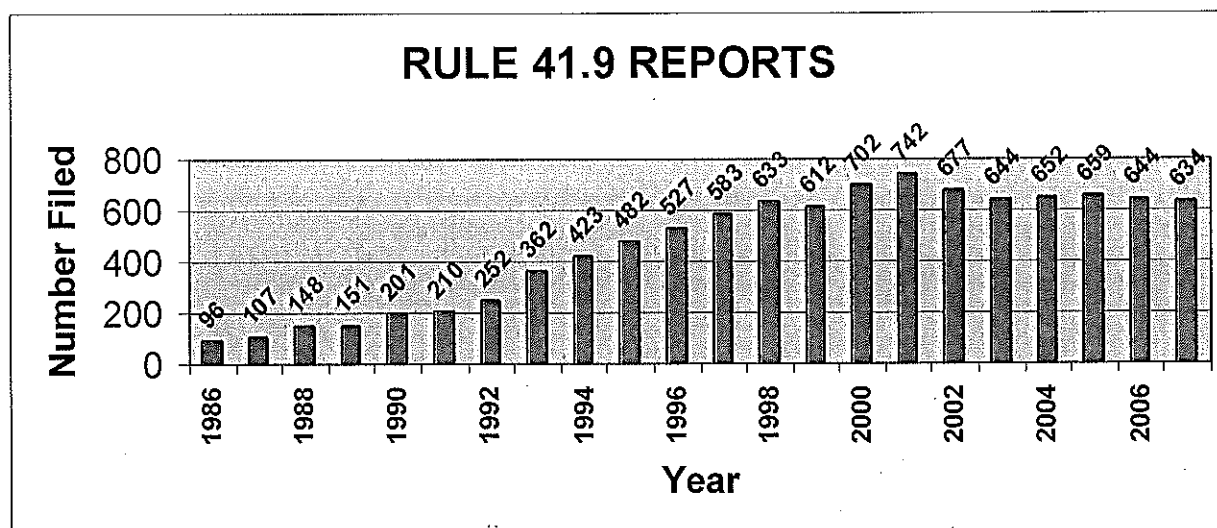
COMPLIANCE

During fiscal year 2007, 8,554 attorneys filed their Annual Report and paid the administrative fee of \$15.00. One hundred and ninety-five attorneys applied for and were granted Certificates of Exemption in 2007 pursuant to Rule 42.6. Of those lawyers previously granted Certificates of Exemption, twenty-nine sought and obtained reinstatement to active practice status in 2007. The following table shows the number of exemptions granted each year since 1991. Exemption applications tend to increase in years when a report showing completion of the biennial ethics requirement is due, and when rule changes otherwise increase the perceived level of difficulty achieving compliance.

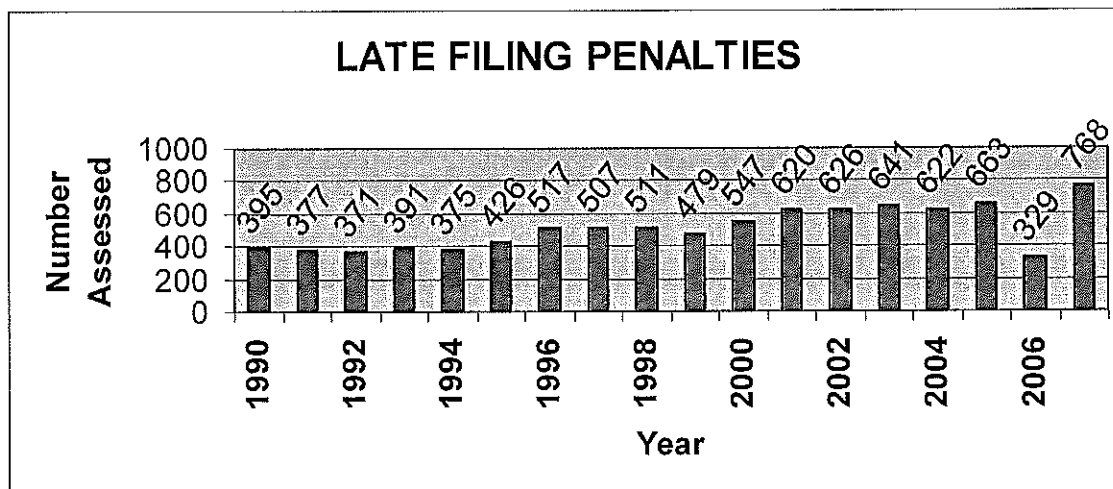


During 2007, 634 attorneys filed with the Commission the written report of compliance required by Iowa Court Rule 41.9. This report must be filed by attorneys before they may hold themselves out as practicing primarily in or

limiting their practice to the fields of law permitted by Iowa Rule of Professional Conduct 32:7.4(e)(2), or designate a field of practice under Iowa Rule of Professional Conduct 32:7.4(e)(1). Attorneys who designate a field of practice must have devoted in the preceding calendar year the greater of 100 hours or ten percent of their time in actual law practice for each indicated field of practice and they must have completed a minimum of ten hours of accredited continuing legal education course work in each indicated field of practice. Attorneys who hold themselves out as practicing primarily in or limiting their practice to a particular field of practice must have devoted in the preceding calendar year the greater of 400 hours or 40% of their time in actual law practice for each indicated field of practice and they must have completed a minimum of fifteen hours of accredited continuing legal education course work in each indicated field of practice. As shown in the following table, the number of lawyers filing reports under Rule 41.9 generally increased each year until 2002, when the most recent significant change in the rule took effect.



The Court adopted a rule in 1980 providing that attorneys who fail by March 1st of each year to file their annual report or pay any required annual fee will be assessed a penalty of \$25.00. Seven hundred and sixty-eight attorneys were assessed a late filing penalty in 2007. As the following table shows, the number of late filing penalties generally increased through 2005. In 2006, late filing penalties decreased due to the one-time extension of the filing due date to encourage electronic filing. In 2007, the filing due date reverted to March 1st, and the number of late filing penalties increased substantially.

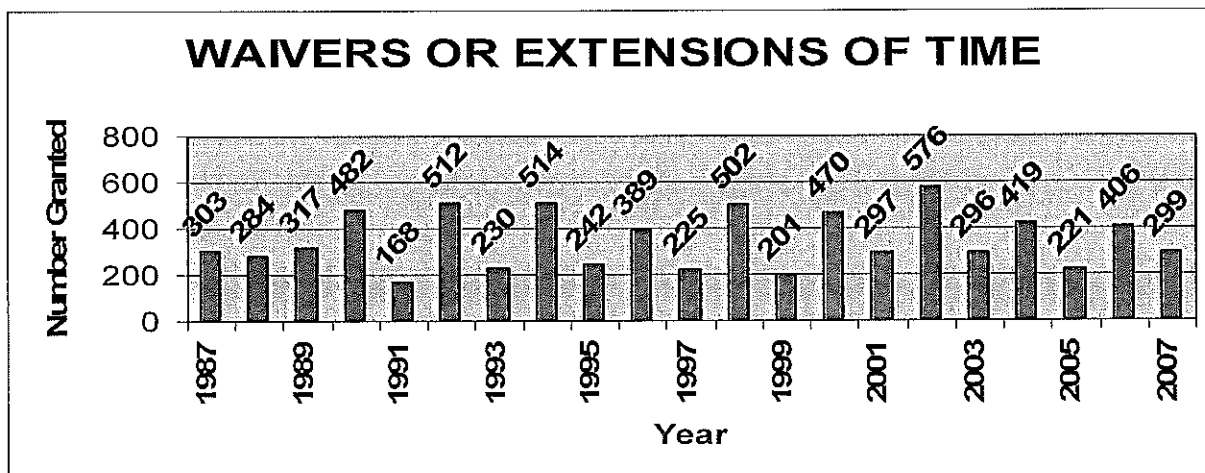


During 2007, notices of delinquency were served pursuant to Iowa Court Rule 41.5 upon 84 attorneys who had failed to comply with the requirements of Iowa Court Rule 41.4. Subsequently, four of these attorneys were suspended by the Court for failure to comply with Iowa Court Rule 41.4.

HARDSHIPS OR EXTENUATING CIRCUMSTANCES

A third division made up of three Commission members considers questionable applications for waivers or extensions of time in which to complete

the requirements, as well as some applications for conditional reinstatement after holding a Certificate of Exemption. During 2007, 299 applications for waivers or extensions of time were approved for completion of regular CLE requirements, and 27 extensions were approved for completion of Iowa Court Rule 41.9 education requirements. The following table shows the number of total waivers or extensions of time filed the previous twenty years. A factor contributing to the significant increase in applications filed in each even-numbered year since 1990 is that many attorneys fail to timely satisfy the legal ethics component of their education requirements.



To encourage timely hardship applications, Iowa Court Rule 42.5 requires that a \$25.00 fee be assessed all waiver or extension of time applications received after January 15th of the year following the year in which the alleged hardship occurred. In 2007, 216 applicants were assessed the \$25.00 fee for requesting a waiver or extension of time after January 15, 2007.

FINANCIAL

In 1989, the Commission changed its method of accounting for income from the cash basis to the accrual basis to conform with generally accepted accounting principles. The financial reports prepared by Brooks Lodden, P.C. reflect this change. In December of 2007, the Court approved a rule change such that the accounting and budget year of the Commission now will be the same as state government generally. Based on that change, the Commission submitted and the Court approved the following Commission operating budget for the transition year December 1, 2007 through June 30, 2008.

COMMISSION ON CONTINUING LEGAL EDUCATION TRANSITION YEAR 2008 BUDGET

Salary & Employee Expenses

Director Salary	\$ 19,630.60
Assistant Director Salary	14,983.50
Clerical Salary	26,556.25
Part-Time Accreditation Support	0
FICA	4,679.53
IPERS	3,786.44
Other Employee Benefits	10,253.13

Other Operating Expenses

Travel Expense – Commissioners	900.00
Travel Expense – Employees	275.00
Rent & Utilities	10,800.00
Auditing	3,000.00
Telephone	460.00
Copier Lease	800.00
Office Supplies	450.00
Printing	600.00
Postage	2,000.00
Repairs & Maintenance	135.00
Employer's Insurance	1,250.00
Miscellaneous, Including Moving	2,400.00
Automation Support	850.00

Payroll Expenses	50.00
Internet App. Maint. & Development	2,000.00
Web Site Hosting Expense	5,000.00
Internet Payment Charges	2,418.00
 TOTAL OPERATING EXPENSES	 \$108,777.45
 CAPITAL EXPENDITURES	 275.00
 TOTAL PROJECTED EXPENDITURES	 \$109,052.45

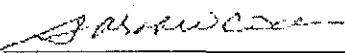
Considering the funds on hand as of November 30, 2007 and anticipated costs of administration during the 2008 fiscal year, the Court approved on November 28, 2007 a 2008 administrative fee assessment of \$15.00 for each attorney eligible to practice in this state. Funds needed for current expenses are presently maintained in an account maintained at Wells Fargo Bank N.A. in Des Moines. Funds not needed for current expenses are invested in certificates of deposit when comparative rates of return warrant such an investment.

Dated this 14th day of March, 2008.

SUPREME COURT OF IOWA
COMMISSION ON CONTINUING LEGAL EDUCATION

Sarah W. Cochran, Chairperson
Matthew Doré, Chairperson (6-30-2005)
Randall Armentrout (6-30-2005)
Karla J. Shea (6-30-2007)
Lloyd A. Stjernberg
William J. Miller
Renee Snetzer
Kristen Ollenburg
Kathleen Kleiman

The Honorable David Christenson
Barbara Maness (6-30-2005)
Patricia J. Vogel (6-30-2006)
Russell Glasgow
Gary R. Faust
Sheldon F. Kurtz
Debra Hulett
Loan Hensley

By 
Sarah W. Cochran, Chairperson

Appendix A - Accreditation Policies
Report of Commission on Continuing Legal Education
Period 2005-2007

- (1) Credit is not allowed for committee work or portions of meetings devoted to administrative matters relating to the organizations sponsoring an activity, such as the business sessions of such organizations.
- (2) Credit is not allowed for sessions that involve a combined meal and presentation, e.g., lunch periods with speakers. The standard is that instruction must be a separate and distinct portion of the program, presented in an educational environment. Credit will be allowed if the sponsor splits the time into separate meal and instruction periods, demonstrates that the meal will not intrude on the presentation time, and otherwise shows the existence of an appropriate educational environment.
- (3) Credit is allowed both to speakers and those in attendance at continuing legal education activities. Speakers at an accredited continuing legal education activity are permitted credit for any actual time required to make the presentation, including panel discussions, question-and-answer periods and similar activities. However no additional credit is given to speakers for time spent in preparing their presentation.
- (4) No credit is allowed to instructors at educational activities aimed directly or primarily at individuals who have not yet been admitted to the Bar. Thus, law school faculty do not obtain credit for instructing law students who have not yet been admitted to practice with the exception that individuals who teach bar review courses are allowed credit for such teaching time.
- (5) A person admitted to practice may obtain credit for taking or auditing a law school course whether at a graduate or regular law school level. A copy of the law school transcript is required when a lawyer requests credit for courses completed incident to a graduate program in law (e.g., L.L.M.) Contact hours are computed based on individual session duration and number of class sessions during the semester. Generally, the number of computed hours will be sufficient to satisfy the general CLE requirement for the year the courses are taken, and provide a 30 hour carry forward, which is the maximum. Ethics requirements still must be separately satisfied.

- (6) Whether or not a continuing legal education activity is sponsored by a non-profit or profit-making organization is considered by the Commission to be irrelevant to accreditation; however, the Commission looks very carefully at courses given by sponsors who appear to be motivated in giving such courses by a desire to assemble a group of attorneys in order to expose the attorneys to the services (other than CLE activities) the sponsor may be able to provide such attorneys or their clients.
- (7) Courses directed primarily at increasing the profits of the practice of law are deemed by the Commission not to meet the standards of Rule 42.3(1)(a) of the Commission's regulations, which requires that the educational activity "contribute directly to the professional competency of an attorney". However, continuing legal education activities dealing with law office management which are directed primarily at improving the quality of or delivery of legal services are deemed by the Commission to be accreditable.
- (8) Except in situations in which permission is specifically granted on applications based on hardship or extenuating circumstances, no credit is allowed for self-study of any kind whether or not aided by video or audio recordings.
- (9) "In-house" activities, that is programs or instruction given by a company or firm for its own employees are considered on a case-by-case basis.
- (10) Video tapes or remote television presentations are generally accredited only if there is a speaker or instructor present at the time and place of showing to answer questions and discuss the presentation with participants in the activity.
- (11) Presentations by attorneys to non-lawyer groups are reviewed on a case-by-case basis. Whether credit will be granted for such presentations will depend upon a variety of factors including but not limited to the subject matter, depth of the presentation and the audience to whom the presentation is given.
- (12) Programs involving non-legal subject matter or courses covering both non-legal subject matter and related common legal subjects designed for attorneys or both attorneys and other disciplines are not ordinarily given prior CLE accreditation. Lawyers may apply for post accreditation after attending such courses. The granting of credit for courses containing non-legal subject matter which are indicated as being integrally related to the practice of law will depend upon a variety of factors including but not limited to the

subject matter of the course, qualifications of the instructors, depth of the presentation and attorneys participation. While attendance at these courses may be justified as being beneficial and possibly relating to an attorney's practice or a particular pending case, the burden is on the applicant to demonstrate that the course does integrally relate to the practice of law and was of sufficient quality and content to meet other established standards for accreditation.

- (13) The area of legal ethics shall include designated instruction intended for and directed to attorneys or judges and cover topics related to or specifically discussed in the disciplinary rules or ethical considerations of the CODE OF PROFESSIONAL RESPONSIBILITIES FOR LAWYERS, the canons of the CODE OF JUDICIAL CONDUCT, provisions of the MODEL RULES OF PROFESSIONAL CONDUCT, or provisions of any comparable ethics or professional responsibility code in the jurisdiction where the instruction is presented. Ethics must be a separate, designated session. Ethics credit is not approved for a part of a class or session (so-called "imbedded ethics"), unless the sponsor designates a specific time period for the ethics portion of the class or session. The content description or handout materials must specifically refer to and be based on the disciplinary rules or judicial canons, or must bear a direct relationship to the Code of Professional Responsibility or the Canons of Judicial Ethics. The commission traditionally has not issued ethics credit for instruction on ethics requirements for government employees generally, such as Iowa Code chapter 68B (Conflicts of Interest of Public Officers and Employees) or its federal statutory or agency counterparts.

- (14) Rule 42.3(1)(d) provides specific authority for accreditation of computer-based transmission events, provided they are interactive. The definition of what qualifies as interactive was left to the Commission to develop as policy, so that the interpretation can mature as technology matures and Commission experience dictates. Current policy is as follows:

(a) For computer-based transmissions presented live, the interactive requirement will be met if there is a method for the viewers to send their questions in to the presenters and hear the answers to (or discussions of) those questions live during the presentation. Computer-based transmission presented live must consist of at least a live streaming audio component like that used for live telephone CLE events. Most events in this category also incorporate a video component, in either a streaming video format

or a moving slide presentation keyed to the audio transmission.

(b) For computer-based transmissions conducted on a demand basis, the Commission's policy defines "interactive" as requiring an interactive forum which reviews all prior questions and answers during the actual presentation, and also allows submission of new questions or comments for response within two business days by the program instructors. Computer-based transmissions conducted on a demand-basis must incorporate both a streaming audio component and a video component. The video component must consist of streaming video or a moving slide presentation keyed to the audio, or both.

The position of the Commission is that attorneys who attend teleconference or computer-based CLE activities must provide certain substantiation as a condition precedent to CLE credit in Iowa. Attorneys are responsible for substantiating their attendance, by attaching the sponsor's certificate of the attorney's attendance for the event to the attorney's annual CLE report, when the attorney submits that report to the Commission on Continuing Legal Education at the close of the calendar year.

- (15) Acceptance of Fax Requests: Requests need not be submitted with an original signature. Requests submitted by facsimile transmission are routinely processed and approved, so long as the necessary information is present.